Law and Facts of the Contest for Governor

The State Election and the Events Following Ably Reviewed by Hon. Lewis McQuown.

The speech of the Hon. Lewis McQuown, delivered at Brandenburg Monday to a large audience, was of special value as the first complete summary that has been presented to the voters of the law and facts bearing upon the contest prosecuted at Frankfort by the Democrats last winter for the state offices. As chief attorney for Mr. Goebel, Mr. McQuown is better qualified than anyone else to present this review of the most important chapter in Kentucky political history, and he has done it thoroughly. The voter who really wishes to understand the merits of that contest will profit from a careful reading of Mr. McQuown's speech, which is published in full below. It refutes many misstatements and will correct many erroneous impressions. Mr. McQuown said:

An issue of overshadowing importance confronts us and threatens our national existence. We are face to face with the problem whether the nation shall continue to exist as an empire or a republic. The Republican party stands for the empire. The administration has abandoned the fundamental principles upon which the struggle for independence was won by our forefathers, and boldly adopted the imperialism policy of England. Territory acquired and held in violation of the supreme law of the land is governed as England governs her crown provinces. The spirit of greed dominates the Republican administration in its foreign policy. Lives and blood are freely given in exchange for trade.

Our internal policy is likewise the result of greed. The combinations of wealth and trade control the country, and we are being ground between the upper and nether millstones. The safety and welfare of the republic at home and abroad demand a change in this ruinous policy. But I do not underestimate the importance of these national questions when I say that in Kentucky there is a local issue of greater interest, which presses for immediate consideration and determination at the polls in November. Leaving the national issues, I shall today speak of ths state issue alone.

The Republican Platform.

The platform of principles adopted by the Republican party of Kentucky, while professing devotion to civil liberty, and the cause of honest elections, with desperate inconsistency approves the lawless act of the bloodiest band of conspirators who have ever held power in an American commonwealth. These acts of infamy are described as "efforts" for the preservation of liberty and social order, and all good citizens are invited to unite with this party for the purpose of furthering these objects.

By way of preface to this astounding statement approving the action of "Taylor and his co-officials," it is declared, in the Republican platform, that officials elected by the people have been denied their offices and that the city of Louisville and the counties of Johnson, Magoffin and Martin have been denied the right to participate in the conduct of the government, and to express their choice of officials at the polls.

These charges, based upon ignorance of fact and law, are wilful perversions of both, have afforded the Republican press and nominees for office and its campaign orators a text for unreasoning denunciation and bitter invective. Those who are ignorant of the law and the facts do not seek enlightenment, and those who possess this knowledge join in the outcry for partisan purposes. In this common and indiscriminate abuse are included the laws of the commonwealth, the general assembly itself, the courts, the juries, the officers charged with the execution of the law, including many of our most eminent and honored citizens, and, in violation of common decency and the proprieties of life, the partisan press and orators have descended to bitter personal abuse of the victim of Republican assassination, who sleeps in the historic cemetery of Kentucky, where presently a monument will be builded to tell, in deathless tones, the story of his life and death. The friend of the people, the foe of their enemies, his name and fame safely guarded in their hearts from the shaft of partisan malice,

"He sleeps an iron sleep—
Slain fighting for his country."

Gubernatorial Contest.

In view, however, of this persistent denunciation and misrepresentation, sparing neither the living nor the dead, it seems proper today, my fellow-citizens, for a short time to view the gubernatorial contest, and its determination by the general assembly, together with the law and facts upon which its action was based.

Prior to the act of March 10, 1898, the governor, attorney general and secretary of state, and the auditor, in the absence of either, were constituted a board for examining the returns of elections for governor and other state officers. (Sec. 1512, Ky. Statutes.) By the amendment of March 10, 1898, the state board of election commissioners were invested with the duty theretofore conferred upon the governor and his associates, and given the same power, in precisely the same language. This power, whether exercised by the governor and his associates, or by the election commissioners, was held by a majority of the latter, in accordance with the general current of authorities, to be ministerial and not judicial, when the board was engaged in canvassing the returns.

Consequently when the returns from the various counties of the commonwealth were canvassed, the many protests and objections, by the Democrats, to the counting of the votes of the city of Louisville, the counties of Johnson, Martin, Magoffin, Knox and other counties, because of fraud, intimidation and the use of tissue ballots, were overruled, the board distinctly holding that the power to pass upon the questions thus presented, insofar as the offices of governor and lieutenant governor were concerned, was vested in the general assembly, and as to the minor state offices was invested in the commissioners themselves, when organized and sitting as a contest board. This was the contention of the attorneys who represented the Republicans, and their view was sustained by a majority of the commissioners, in a lucid and able opinion. In express terms, the various questions presented to the commissioners were relegated to the two tribunals which alone had the power and jurisdiction to hear and determine them.

The Certificate.

The canvassing board being powerless to hear and determine the grave questions presented, and finding from the face of the returns that Taylor had a majority of the votes, a certificate, to that effect, was issued. The only fact which the board certified was that Taylor had "received the highest number of votes given, as certified to official ballot;" and by Section 146 of the secretary of state." The additional statement that he is "therefore duly and regularly elected" was only the conclusion of the commissioners from the facts found.

After, having, by counsel, urged upon the commissioners that it was their duty to so find, because of lack of jurisdiction, the Republican leaders and press immediately assumed the position that Taylor's certificate was conclusive, and that his adversary was precluded from making the contest, because the Democratic commissioners had certified that he was duly elected. This position shows at once the inconsistency and bad faith of the Republican party. The mountain assassins were nerved and fitted for their bloody work by the partisan leaders and press, which continually inflamed and mislead them by repetition of these false statements. Thus taught, they were ready to follow their leaders with the blind devotion with which the true believers followed the banner of the prophet.

The title of the office of governor, it is provided by law, may be assailed by contest, as in the case of other offices. A tribunal is always provided to examine the returns and investigate the validity and legality of the election. The face of the returns is not conclusive. The result certified may have been produced by fraud or intimidation, or by votes otherwise illegal. To examine upon evidence and determine these questions is the duty of a contest board. The result shown on the face of the returns is oftentimes changed. No political party is more familiar with this rule than the Republican party itself.

Mode of Contest.

By section 90 of the constitution of Kentucky it is declared that "contested elections of governor and lieutenant governor shall be determined by both houses of the general assembly, according to such regulations as may be established by law." This has been the law for a hundred years.

The regulation established by law, provided for the drawing, by lot, of three members of the senate and eight members of the house of representatives to act on a board of contest. In the senate the Hon. John Marshall, then acting as lieutenant governor, received the slips of paper and announced the names of the members drawn, not only in the governor's case, but in his own. The Democratic members of the senate made no objection to this, although it was said by many persons that Marshall, being interested, should have called some impartial senator to the chair.

Notwithstanding the fact that he declared at the time that the drawing was fair, the Republican press and orators have bitterly assailed the clerk of the senate and of the house of representatives. The sole fact on which this denunciation rests is that the majority of each board drawn were Democrats. The political complexion of the general assembly was about sixty Democrats to about forty Republicans. Upon a number of important contest committees drawn the same day in the house the Republicans had a majority, and upon all the contest committees drawn, collectively, the Republicans had a majority. Not satisfied with this, the statement has been persistently made that the drawing was unfair.

The Result of Chance.

There were about eighty-six Democrats in the late constitutional convention, and about fourteen Republicans. There was a contest for the seat of the member from Washington county. A contest committee was drawn by lot to consider the report upon the contest. The singular fact was revealed that the committee drawn was about equally divided politically.

The Democratic members of the convention made no criticism or outcry. It was manifestly the result of chance. The Republicans made no charge of fraud, because the drawing was in their favor. They made no charge of fraud where they secured a majority of other important contest committees in the general assembly. Neither did the Democrats complain. If the drawing of the gubernatorial committee was unfair because a majority were Democrats, and the laws of chance were violated, then the drawings in the constitutional convetion and the other drawings in the general assembly were likewise unfair.

By what rule would those who complain judge these drawings? How often may the majority prevail, and how often must the minority lose? How near must the result approach the political proportions of the members in order to be fair? Is it free from suspicion when this proportion has beeen reached? Does it become unfairer when this proportion is departed from? If so, where does fraud set in and fairness end? The devotee of chance whose life has been given to the study of these inexplicable problems has never yet been able to formulate a rule. It would seem, however, that the Republican rule is that whenever they win the drawing is fair, and when they lose it is unfair. This assault made upon the drawing of the contest board has no fact to sustain it. The reputation and character of the officials who conducted these drawings, publicly in the presence of the general assembly, is a sufficient refutation of the baseless charge.

The Law and the Evidence.

But it has been persistently charged that the contest board and the general assembly acted without law or evidence, and that by excluding the votes of the city of Louisville and the counties of Johnson, Magoffin and Martin the people in these localities were denied the right of suffrage, and Taylor and his co-officials deprived of their offices; or, to use the form of expression which Mr. Yerkes has adopted, the board and the general assembly "stole" the offices.

The contest board and the members of the general assembly were acting under oath when they determined this contest. Mr. Yerkes is only speaking as the partisan nomineee of the political party which is directly responsible for the assassination of Mr. Goebel, and which has approved the action of the murderers. A presumption of fairness and faithful discharge of duty sustain the official action of the board and the general assembly. Mr. Yerkes' statement is weakened by the presumption that attaches to the utterance of a man who is speaking in behalf of a criminal whose conduct he approves.

One of the grounds upon which the election was contested was that in a number of counties, including Johnson, Magoffin, Martin and Knox, the ballots used were printed on paper so thin and transparent that the printing and stencil marks could be easily distinguished from the backs thereof. If this be true, the entire vote cast in these counties should be disregarded in arriving at the result. The ballots were printed and cast in violation of the supreme law of the land.

In Section 47 of the constitution of Kentucky it is provided that "all elections by the people shall be by secret the Kentucky statutes it is enacted that "all ballots shall be printed on plain white paper, sufficiently thick that the printing can not be distinguished from the back."

The object of the provision of the constitution was to secure the secrecy of the ballot. The reason of secrecy was to afford the timid and weak an opportunity to cast their ballots free from intimidation or molestation and to prevent the corrupt voter from bargaining for the sale of his vote. When the ballot is printed on paper not sufficiently thick to hide the printing and the stencil of the voter, the object of the law fails, and it is no more than a system of viva voce voting. The court of appeals in Nail vs. Tinsley, 21 Ky. Rep., 1,167, held that an election with ballots, by which the officers of the election could see for whom the vote was cast was invalid.

The law being plain and well settled, the question of fact is now presented, did the evidence authorize the contest board and the general assembly to find that in any of the counties objected to thin or tissue ballots were used, in violation of the law?

Sample Tissue Ballot.

I have here one of the ballots which was used in Johnson county and filed before the contest board by J. M. Preston, county clerk of that county, on the 17th day of January, 1900, as shown by the endorsement thereon, by W. P. Thorne, Jr., clerk of the board. By reference to volume 2, page 72, of the transcript of the record filed in the supreme court of the United States, for use in the case of William S. Taylor and John Marshall, plaintiffs, in error, against J. C. W. Beckham, defendant, in error, the evidence of Mr. Preston will be found, in which he states that he caused these ballots to be printed at the Pawpaw printing office, in Catlettsburg, Ky. You will observe marks as well from the back as from the face of this ballot.

Upon page 112 of the same volume will be found the testimony of J. D. Kirk, county court clerk of Martin county. He testified that he procured all of the ballots used in his county at the election in November, 1899, to be printed at the Pawpaw office. He filed a smaple, printed on the same paper, and just like the Johnson county ballots in every respect except as to names.

On page 61 of the same volume will be found the evidence of R. C. Minnix, county court clerk of Magoffin county. He had his ballots printed at the same office and on the same paper that Preston and Kirk did. All three of these clerks were Republicans.

The evidence is conclusive that the printing and stencil marks could be observed from the back of these ballots. I refer to the statements of some of the witnesses.

The Testimony.

J. G. Arnett, who resides at Meddis precinct, in Magoffin county, was an officer of the election at Precinct No. 8, and was asked as to the quality of the ballots (Vol ii., page 63):

Q—Did you in fact see how the votes were cast from the back of the ballots?

A—A great many of them; yes sir.

Q—Do you know whether the other officials, or any of them, saw how these votes were cast, from the back of the ballots?

A—They could whenever they had a mind to do so.

Q—In counting them how did you count; look at the face or at the back of the ballots?

A—We counted a great many ballots just in this way, didn't undouble them any more than that. (Indicating.)

Q—You didn't look at the faces at all?

A—Didn't open them and look at the faces; no sir.

D. Milt Hodger, who resides at Salyersville, Magoffin county (Vol. ii., page 67), was interrogated about the ballots:

Q—Mr. Hodger, state whether or not, as an election officer, you could see how the votes were cast when the ballots were handed to the officer by the voter.

A—I could readily and easily see how each of the voters voted.

Q—Was there and conversation at the time between he officers as to your being able to distinguish how the votes were cast?

A—There was.

Q—Did the other officers observe from the back of these ballots the stencil marks upon them?

A—They did when they so desired. Mr. Senot P. Adams, who was the challenger, examined them quite often, frequently for the purpose of ascertaining how the voter gave his vote.

Q—Was there any discussion as to how certain individuals voted, between you and any of the election officers?

A—There was.

Q—Did you and these officers ascertain the fact as to how the votes in question were cast?

A—We did.

Q—How did you ascertain the fact?

A—By looking at the back of the ballots.

In Johnson County.

George Vaughn was a judge of the election at Precinct No. 1, Paintsville, Johnson county, and testified (Vol. ii., page 74) concerning the ballots:

Q—What sort of ballots were used in your precinct?

A—They were pretty thin.

Q—How do you know they were thin?

A—I knew it by looking at them.

Q—Looking at the back or the face of the ballot?

A—Looking at the back ot it.

Q—In looking at the back of the ballot what could you discern, if anything?

A—I could discover how a man voted.

Q—As a matter of fact, did you discover during the election how persons voted whose votes were deposited with you?

A—Yes, sir; I could have seen how any man voted if I was so minded.

D. J. Chandler was an inspector and challenger in Little Gap, Precinct No. 8, in Johnson county. He testified (Vol. ii., page 76) in reference to the ballots used at the election in his county as follows:

Q—What sort of ballots were used in your county, Mr. Chandler, with reference to seeing through them?

A—The ballots could be seen through.

Q—Every time you looked could you ascertain how a certain person voted; were you enabled to do so?

A—Yes, sir; any time I tried I could see how a person voted by going around there when the judge went to deposit in the ballot box.

Q—Do you know whether the judge and the other officers of the election who were in the voting place saw and knew from the back of these ballots how the votes were being cast?

A—I know they said they did.

In Knox County.

In Knox county the ballots were printed in Barbourville, Mr. Parker, the county clerk so testified. This county was also objected to on account of the use of thin ballots.

Mr. S. B. Dickman, a prominent attorney residing at Barbourville, testified (Vol. ii., page 85) concerning these ballots.

A—The first vote that was cast our attention was called to the cross being observed through the ballot, so that we could distinguish for whom the voter had voted, and we noticed through the day many votes that were cast—we could tell who the party voted for. The ballots were folded by the clerk and handed to the voter, and when he would return from the booth he would usually return the ballot folded in the same manner that it had been delivered to him; most of the ballots that were returned by the voters there at the precinct, I took charge of and tore off the secondary stub. I placed the ballot on a book that was lying on the table and detached the stub from the ballot, and without any effort on my part to see who the voter voted for I could easily distinguish who he had voted for.

D. B. Faulkner, election commissioner of Knox county (Vol. 2, page 93), testified that he had examined a large number of the ballots; that they were printed on transparent paper, and that the stencil mark could be seen through the paper upon all that came before the commissioners.

J. F. Stanfill, who was a judge of the election in Knox county (Vol. 2, page 11[illegible], testified that the ballots were transparent, and that he could see from the back of the ballot how the vote was cast.

The ballots from these four counties were filed before the board. They showed for themselves, as does the one I have exhibited here today. The evidence of their illegality was conclusive and overwhelming. No honest or impartial man can contend that these ballots ought to have been counted. To do so would be not only to violate the statute, which prescribes the character of the ballot, but also the letter and spirit of the constitution itself. If four counties of the commonwealth may disregard the constitution in respect to the character of their ballots, then it may be done by any number of all the counties. The present elaborate system of voting introduced in Kentucky was adopted because it was supposed to secure secrecy. No man can look at the ballots and say that the secret of the voter was preserved in Johnson, Magoffin, Martin and Knox counties.

An Appellate Decision.

But the Republican press and orators have charged that the voters of these counties should not be disfranchised because of the fraud or mistake of the clerks in procuring these ballots. The court of appeals of Kentucky, in the case of Nall vs. Tinsley, already referred to, has given the answer of the law to this contention—hear it:

"It is suggested that such an interpretation may disfranchise voters, and that they should not be so disfranchised by reason of the fraud or mistake of some county clerk whose duty, under the law, is to furnish the ballots. Whilst the voter may lose his vote by reason of such conduct by a county clerk, still that fact can not change the meaning of the constitution and statute.

These four counties are in the heart of the zone of assassination. One of these is the home of Caleb Powers and John Powers. The latter is now county school superintendent of Knox county. On the 28th day of August, John Powers, with a bodyguard of ten desperate, heavily armed men, at his home on Brush creek, executed, before the county judge and county clerk of that county his bond as school superintendent. Although John Powers has been under indictment for the murder of Gov. Goebel for nearly six months, he has remained in the mountains unmolested. When the election commissioners of Knox county assembled to canvass the returns and certify the result of the last election, an angry mob of 500 or 600 Republicans, with ropes to hang the Democratic commissioners, remained in the streets while the county board was in session and freely threatened them with death if they failed to certify according to the opinion of the mob. In a county like this, where violence and lawlessness is the rule, and force and intimidation control, if the secrecy of the ballot is destroyed, it will result in the utter disfranchisement of hundreds of honest but timid men. A majority of ruffians have no legal or moral right to disfranchise the orderly and peaceful element of the community, and the law will not hear them wnen detected and they cry out against the disfranchisement of themselves.

A Bounded Duty.

The votes of these four counties, by the plain letter of the coustitution, as contrued by the court of appeals, as well as for the considerations last stated, should not have been taken into the estimate when arriving at the result. It was the bounded duty of the board and of the general assembly to disregard the vote.

On the face of the returns the state board found that Taylor had a majority of 2,383 votes. This included the majorities of the tissue ballot counties, viz.: Knox, 1,385; Magoffin, 326; Martin, 473, and Johnson, 878. These majorities aggregate 3,062. The Taylor majority, shown on the face of the returns, deducted from the latter number, defeated Taylor and elected Goebel by 679 votes.

The Republican orators and press call this stealing the offices, and denying to the people of these counties a voice in the lection. The dominant party in these counties, through their officials, procured these unlawful ballots for use, and by means thereof, sought, through publicity and intimidation, to disfranchise the timid voters of the minority, and to corrupt those that could be purchased. There is no means of knowing to what extent they succeeded. The familiar maxim of the law that no one can take advantage of his own wrong, applies to parties as well as to individuals. That the procurement and arrangement of these ballots was the result of a conspiracy is apparent from the record and an inspection of the ballots themselves. The object of this conspiracy was to disfranchise and corrupt. Detected in this crime against the elective franchise, the perpetrators are estopped in law, and in morals, to complain. The procurers of these tissue ballots disfranchised themselves and the voters of their counties. This is the mandate of the law, and the party now masquerading in Kentucky under the banner of "civil liberty" must sooner or later learn that they must submit to and obey the law.

The City of Louisville.

But the Republican platform charges that the city of Louisville was disfranchised and deprived of the right to participate in the conduct of the state government. Goebel received the highest number of legal votes and was elected without the change of a single vote in the city of Louisville. Glaringly outrageous as was the conduct of the Republican officials, with respect to the election there, it was not necessary for the board or for the general assembly to consider the objections made as to this vote. But inasmuch as misrepresentation and concealment have been resorted to for the purpose of deceiving the public, I propose to show that the grounds of contest relating to Jefferson county were well taken, and required its vote to be disregarded, in arriving at the correct result.

It is declared by the constitution of the commonwealth (Section 6) that "all elections shall be free and equal." This provision had its origin in the venerable statute of Edward I., where in it was declared that "because elections ought to be free, the king commandeth, upon great forfeiture, that no man, by force of arms, nor by malice nor menacing, shall disturb any to make free elections."

Another fundamental principal declared in our constitution (Section 22) is that "the military shall, in all cases and at all times, be in strict subordination to the civil power." This provision is derived from the Declaration of Independence, wherein it was stated, as one of our grievances, that the king "had affected to render the military independent of and superior to the civil power."

These principles, so vitally important for the protection of the liberty of the citizens, were disregarded and violated by the Republican executive and nearly 9,000 voters thereby disfranchised in the city of Louisville.

The militia of the state, in anticipation of the event, was reorganized on a partisan basis. Democratic companies were either mustered out or disarmed, under the pretext of furnishing them with better arms. But these equipments never came.

Gov. Bradley's Acts.

Gov. Bradley reached the city of Louisville a few days before the election. A few days prior to his coming epuipment, arms and ammunition for the Louisville regiment were shipped from Frankfort, and on the day before the election two Gatling guns, with thirty thousand rounds of ammunition, arrived. On the morning of the election, before the polls were opened, he called the regiment to the armory in the heart of the city and put it under arms. All these events were chronicled in the most sensational manner by the daily press. During the interval between hasty orders for Gattling guns and ammunition the Republican governor was making Republican speeches and conferring with that highly respectable, but exceedingly nervous and suspicious aggregation of political pharisees known in current history as "honest election leaguers." The Louisville Dispatch and Evening Post were filled with bloody threats and startling insinuations as what was to be done with the militia, with the governor in personal command, on election day. The result upon the public mind may be expressed in the terse language of the witnesses themselves: "The alarm was extensive," "people were in fear and dread," "the talk about the preparation for the militia being called out and the introduction of cannon, guns and ammunition in the city was current on the streets;" "a great many men were unquestionably kept from the polls," "people were afraid there would be a clash at the polls." Much more to the same effect was proven.

Effect On the Vote.

It required no prophet to foretell the result. There was a total loss of 9,806 registered votes at the election.

The entire registered vote of the city, in round numbers, was 42,042. The entire vote cast was 32,236. The Democratic registered vote was 22,000; the vote cast 13,400—a loss of 8,600 Democratic votes. The registered Republican vote was 13,700; the vote cast was 16,550—a Republican gain of 2,850 over the registration.

There was a loss of about 25 per cent of the vote of the city. The record shows that the usual falling off is not more than 10 per cent, and this is generally distributed between the parties about in proportion to their strength. It is perfectly plain that this extraordinary result was produced by military intimilation. The spectacle indeed was extraordinary. No such event had ever transpired in Kentucky. Peaceful and law-abiding citizens asked with wonder and amazement where this unprecedented display of military would end. They had read in the constitution of the state that the governor should not personally take command of the militia unless advised so to do by resolution of the general assembly; they had read in the law that the militia when called out should be directed to report to a mayor of a city, sheriff, jailer, marshal; they had read that the militia should only be employed in aid of the civil power of the commonwealth for the enforcement of the law.

The citizens beheld all these requirements and safeguards of the law set aside. A partisan press daily heralded the fact, in inflammatory articles, that the governor would, notwithstanding the constitution, personally command the military forces; that the military should not be allowed to report to the mayor, the sheriff or the jailer, and would not act in concert with, but in opposition to these civil officers. Is there wonder, then, that strong men were deterred by the thousands from voting or even going near the polls?

Intimidation of Voters.

The result of all this was the destruction of the freedom of the election and the intimidation of the voters.

In McCrary on elections it is said (Section 552), that "an armed force, in the neighborhood of the polls, is almost of a necessity a menace to vot-

GOV. BRADLEY AS A MODERN PROPHET.

Extract from Gov. Bradley's message to the general assembly of 1898.

"If any one of the departments may infringe upon the privileges of the others the result must inevitably be disastrous. Suppose the general assembly should enact a law declaring all judgments of the courts, or, indeed, any judgment of a court, null and void, or that the executive should determine to disperse the general assembly, or that a court should decide that the legislature should enact no law, or, the governor's orders should not be obeyed, can any sane man doubt that anarchy and revolution would be the natural and unavoidable sequence?"